IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

CRP.No. 260 of 2007

OPELE.20/2005 of I ADDL.M.C., NEYYATTINKARA

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REVN. PETITIONER/PETITIONER:

T.VINOD, S/O.THAMPI,
KULATHINKARA VEEDU, MURIAMCODE,
KARAKONAM, KUNNATHUKAL PAKUTHY.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT/RESPONDENT:

ANIL KUMAR, S/O.GOPALA PILLAI,
GOPALA SADANAM, KARAKONAM P.O.,
KUNNATHUKAL VILLAGE.

BY ADV. SRI.K.G.RENGANATH

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/03/2007 ALONG WITH CRP NO. 266 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

C.R.P.Nos.260 & 266 of 2007

COMMON ORDER

The petitioner and the respondent in both these revision petitions are the same. The petitioner is the first respondent in O.P.(Election)No.20/05 on the file of the Munsiff's Court, Neyyattinkara. The said election petition was filed by the respondent. The petitioner filed a recrimination petition (I.A.No.3965/06). However, the said petition was filed belatedly, but, with I.A.No. 3967/06 seeking for condonation of delay of 333 days in filing the recrimination petition. Both the petitions were dismissed by the court below. It is against the dismissal of I.A.No.3967/06, refusing to condone the delay of 333 days in filing the recrimination petition, is C.R.P.No.260/07 filed and it is against the dismissal of I.A.No. 3965/06, is C.R.P.No.266/07 filed. The result of the order that is to be passed in C.R.P.No.260/07

is to decide the fate of C.R.P.No.266/07, as in the event of this Court confirming the order of the court below refusing to condone the delay in filing the recrimination petition, C.R.P.No.260/07 has to be dismissed and consequently, C.R.P.No.266/07 will also have to be dismissed.

2. It is vehemently contended before me by the learned counsel for the petitioner that as per Section 94 of the Panchayat Raj Act, every election petition has to be tried by the court in accordance with the procedure applicable under the Code of Civil Procedure, to the trial of suits; that a Court trying an election petition is a Munsiff's Court and not a Tribunal and therefore, the court is competent to condone the delay and that the view of the court below that Limitation Act is not applicable to recrimination petitions filed, so as to enable the court to apply Section 5 of the Limitation Act and to condone the delay is incorrect. It is urged by him, therefore, that the

order impugned in C.R.P.No.260/07 be set aside and consequently, the recrimination petition be accepted, allowing C.R.P.No.266/07.

3. On the other hand, learned counsel for the respondent submits that under Section 89 of the Panchayat Raj Act an election petition has to be filed within thirty days from the date on which the returned candidate was declared elected and under Section 99 of the Panchayat Raj Act when an election petition is filed for declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void, if he had been the returned candidate and a petition had been presented calling in question his election, but that under the proviso to said Section the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within

fourteen days from the date of commencement of trial, given notice to the court of his intention to do so coupled with other conditions, provided in the said proviso. It is also pointed out that under Section 93(3) of the Panchayat Act any candidate, not already a respondent in the election petition, shall on an application made by him to the court within fourteen days from the date of commencement of the trial and subject to other conditions specified therein be entitled to join as a respondent. The explanation to Section 93(3) of the Panchayat Raj Act further provides that for the purpose of Section 93(3), trial of the election petition shall be deemed to commence on the date fixed for the respondent to appear before the court and answer the claim or claims made in the petition. Neither the respondent nor the petitioner has got a case that in relation to the proviso to Section 99(1) of the Panchayat Raj Act, the starting point of trial is any other date and not

the date fixed for the respondent to appear.

4. The learned counsel for the respondent invited my attention to the decision of the Apex Court in **Anwari Basavaraj Patil v. Siddaramaiah** (AIR 1994 SC 512), wherein it is held that Section 5 of the Limitation Act is not applicable to notice on recrimination under Section 97 of the Representation of People Act. The provisions of the Panchayat Raj Act in relation to election matters are in parimateria with the provisions of the Representation of People Act. A Division Bench of this Court in **Anandavally v. Ajitha** (2001 (3) KLT 758) has held that election petition filed beyond the time prescribed by Section 89 of the Panchayat Raj Act cannot be entertained. When the Limitation Act is held not applicable in relation to petitions filed under Section 89 of the Panchayat Raj Act, obviously it has no application to notice on recrimination petition as well. This Court in **Danam v. Purushothaman Nair** (ILR 2007(1)

Kerala 284) has held that recrimination petition has, necessarily, to be filed within fourteen days time prescribed by the Act and that petitions filed belatedly cannot be entertained as obviously Section 5 of the Limiation Act has no application to matters of election petitions under the Panchayat Raj Act as well. The result is that the challenge made by the petitioner to the dismissal of the delay condonation petition in C.R.P.No. 260/07 is bereft of any merit and deserves to be dismissed. Consequently, C.R.P.No.266/07 also deserves a dismissal.

In the result, confirming the impugned orders of the court below, I dismiss both C.R.P.Nos.260/07 and 266/07.

30th March, 2007 (K.P.Balachandran, Judge)

tkv